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# Colonialism and Modern Constructions of Race: A Preliminary Inquiry

TAYYAB MAHMUD\*

"A commonplace gesture of History: there have  
to be *two* races - the masters and the slaves."<sup>1</sup>

Taking seriously the proposition that Western knowledge and representation of the non-European world is the key to understanding racial ideology,<sup>2</sup> I aim at a preliminary examination of the colonial career of the modern constructions of race and its traces in post-coloniality. I propose to locate race in regimes of legality and illegality in the context of British colonial rule over India to underscore the defining role of colonialism in modern constructions of race. Conquest, subjugation, and exploitation are as old as recorded history. So are racial difference, conflict, and domination. While modernity framed these processes against claims of universal principles of public good and virtue, the age of empire brought into sharp relief the exclusions built into modern notions of citizenship, sovereignty, representation, and the rule of law. I posit that it was to reconcile colonial domination with the ideals of freedom and equality, that a modern discourse of racial difference and hierarchy gained hegemony, whereby capacity and eligibility to freedom and progress were deemed biologically determined, and colonialism was legitimated as the natural subordination of lesser races to higher ones. In the colonies, heterogeneity presented by the colonized was made manageable by assigning them racialized classifications. Imperatives of colonial rule combined with a grammar of racial difference to constitute racialized stereotypes of natives to facilitate legally sanctioned regimes of discipline and control. These stereotypes are remarkable for their contingent deployments, malleability, and resilience. Traces of racialized discursive structures and institutional practices forged in the context of Europe's colonial encounter remain visible in post-colonial terrains,

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1. HELENE CIXIOUS & CATHERINE CLEMENT, *THE NEWLY BORN WOMAN* 70 (Betsy Wing trans., 1986).

2. See, e.g., FRANTZ FANON, *THE WRETCHED OF THE EARTH* (Constance Farrington trans., 1967) and EDWARD SAID, *CULTURE AND IMPERIALISM* (1993).

where many a public policy and legal regime are animated by racialized categories and classifications.

### I. THE MODERN GRAMMAR OF RACIAL DIFFERENCE

Modern Europe<sup>3</sup> sees itself as the product of the Enlightenment, with the attending ideals of reason, freedom, liberty, equality, progress and the rule of law. Modernity of Europe is, however, coterminous with its colonial expansion and imperial rule, marked by conquest, subjugation and genocide. How were these two contradictory strands reconciled? In the answer to this question lie the roots of modern constructions of race that animate many an inter-national regime of legality and illegality. I take issue with the argument that "the genesis of the modern discourse of race [is] part of the attempt to articulate differences *within* European society."<sup>4</sup> I argue instead that Europe's colonial encounter is fundamental to the modern constructions of race, which facilitated the establishment and consolidation of this relationship of domination and subordination. This is not to suggest some unidirectional determinism; it is rather that "Europe was made by its imperial projects, as much as colonial encounters were shaped by conflicts within Europe itself."<sup>5</sup> But while mutually constitutive of the colonizer and the colonized, colonialism is a relationship of domination and difference, with race constituted as a primary marker of difference.

Crucial to the modern constructions of race is the fundamental distinction between Enlightenment ideals and the situated and embodied practice of those ideals. Nothing demonstrates the yawning gulf between the two more than, for example, the European reception of the Saint Dominique Rebellion, when, contemporaneous with the French Revolution, Creoles and black slaves in Haiti claimed the Rights of Man and challenged French sovereignty. This attempt to inject questions of race, slavery and colonialism into the agenda of liberalism and modernity only won Haitians the wrath of Europe. They became symbols of backwardness and danger—a threat to the "natural" orders of private property, racial hierarchy and civilization. Faced with such contradictions

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3. I use the term Europe not so much to designate a particular geographical space or a particular people, but as to identify the self-proclaimed universal subject of History. In this sense, Europe includes European settler societies around the world. While the term is evocative of singularity, any productive understanding of Europe has to be nuanced and discerning of diversities within it, especially attuned to "its peculiar historicity, the mobile powers that have constructed its structures, projects, and desires." TALAL ASAD, *GENEALOGIES OF RELIGION: DISCIPLINES AND REASONS OF POWER IN CHRISTIANITY AND ISLAM* 23-24 (1993).

4. KENAN MALIK, *THE MEANING OF RACE* 81 (1996) (emphasis added).

5. Ann Laura Stoler & Frederick Cooper, *Between Metropole and Colony: Rethinking a Research Agenda*, in *TENSIONS OF EMPIRE: COLONIAL CULTURES IN A BOURGEOIS WORLD* 1 (Frederick Cooper and Ann Laura Stoler eds., 1997).

between ideals of the Enlightenment and liberalism on the one hand, and slavery and colonialism on the other, hegemonic forces in Europe fashioned strategies of exclusion, grounded in a racial dichotomy between human and sub-human, or civilized and savage.<sup>6</sup> This triggered the mutually constitutive role of colonialism and modern Europe; many foundational constructs of modernity - reason, man, progress, and the nation - were developed in contrast with a racialized "non-Europe," with the latter posited as pre-modern, not fully human, irrational, outside history. The process culminated in a modern grammar of racial difference, whose primary building blocs were the constructs of History and the development of liberalism against the backdrop of colonialism.

The age of colonial expansion of Europe also saw the consolidation of History - the unilinear, progressive, Eurocentric, teleological history - as the dominant mode of experiencing time and of being.<sup>7</sup> In History, time overcomes space - a process whereby the geographically distant Other is supposed to, in time, become like oneself; Europe's present becomes all Others' future. Embodying the agenda of modernity, History constitutes a closure that destroys or domesticates alterity of the Other. History, as a mode of being, becomes the condition that makes modernity possible, with the nation-state posited as the agency (the subject of History) that will realize modernity. In Hegel's construction, for example, nations attain maturity only when a people are fully conscious of themselves as subjects of History, and it is only such nations which realize freedom. Those outside History, "non-nations," have no claims or rights; nations have the right to destroy non-nations and bring Enlightenment to them. History becomes a master code, the imaginary, that informs the "civilizing mission" of Europe, posited as a world-historical task. As a progeny of the modern ideas of reason, progress and science, Social Darwinism, which fixes upon race as the repository of those attributes that enable or prevent evolution towards civilization, combined with History to write a legitimating script for colonialism. In the name of enlightened civilization, a hierarchy of "advanced" and "backward" races was posited. Cast in terms of "natural selection" and "survival of the fittest," evolutionary racism "offered strong ideological support for the whole colonial enterprise . . . savages were not simply

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6. See generally RACE AND THE ENLIGHTENMENT: A READER (Emmanuel Chukwudi Eze ed., 1997), and Leon Poliakov, *Racism from the Enlightenment to the Age of Imperialism*, in RACISM AND COLONIALISM: ESSAYS ON IDEOLOGY AND SOCIAL STRUCTURE 55 (Robert Ross ed., 1982).

7. See generally ROBERT YOUNG, WHITE MYTHOLOGIES: WRITING HISTORY AND THE WEST (1990); POST-STRUCTURALISM AND THE QUESTION OF HISTORY (Derek Attridge et al. eds., 1987); and MICHEL DE CERTEAU, THE WRITING OF HISTORY (Tom Conley trans., 1988).

morally delinquent or spiritually deluded, but racially incapable.”<sup>8</sup> European “race-science”<sup>9</sup> consolidated the double binary of fair/dark and civilized/savage, by positing the anatomical investigations of Europeans and Africans as establishing the top and bottom of a progressive series of human races with comparable mental endowments and civilizational achievements. With the diagnosis accomplished, prescription quickly followed: “[n]ations in which the elements of organization and the capacity for government have been lost . . . are restored and educated anew under the discipline of a stronger and less corrupted race.”<sup>10</sup> History, then, became a record of progress of superior races and, by that standard, the stagnant, backward races had no History; colonialism, as a project of bringing the backward races into the universal History, bridged Enlightenment with modern constructions of race.

While History furnished the basic contours of modern constructions of race, the notion of the rights-bearing individual posited by liberalism added content to these constructs by reconciling liberty with colonialism. Liberalism and colonialism developed alongside each other. With rare exceptions, liberals approved of colonialism and provided it with a legitimizing ideology. If eligibility for universal rights was conditioned upon recognized subjectivity, claims to these rights could be denied if the subjectivity of some was erased. By resting such an erasure on pre-social, biological grounds, one could say with confidence that “higher races are inherently more qualified for both political and individual liberty than the lower.”<sup>11</sup> Liberal discourses of rights, inclusion, and equality could be reconciled with colonial policies of exclusion and discrimination by positing essential differences between different types of individuals and subjectivities.

The universalist claim of liberalism rests on the capacities it identifies with human nature - to be born free, equal and rational. It is this anthropological premise that anchors the concept of consent, which in turn, grounds liberal institutions of contract, rule of law, and representation. Those designated as being unable to exercise reason are deemed incapable of consent, and thus, they can be excluded from political constituency and governed without consent. The capacity to reason, far from being universal, was posited as a matter of education and “breeding,” by which one is initiated into specifications of time, place and social norms,

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8. GEORGE W. STOCKING, *VICTORIAN ANTHROPOLOGY* 237 (1987); *see also* GEORGE W. STOCKING, *RACE, CULTURE, AND EVOLUTION: ESSAYS IN THE HISTORY OF ANTHROPOLOGY* (1968).

9. *See* NANCY STEPAN, *THE IDEA OF RACE IN SCIENCE: GREAT BRITAIN 1800-1960* (1982).

10. LORD ACTON, *NATIONALITY*, in *MAPPING THE NATION* 31 (Gopal Balakrishnan ed., 1996) (first published in 1862).

11. ROBERT KNOX, *RACE IN LEGISLATION AND POLITICAL ECONOMY*, *XIII ANTHROPOLOGICAL REVIEW* 113, 126 (1866).

with the white, male, propertied adult furnishing the standard.<sup>12</sup> Exclusions based on class, gender, and race were the logical outcome. By making specific cultural norms preconditions for actualization of the supposedly universal capacities, universalism yielded to exclusions, through which liberty was found to have no application to “backward societies.” Liberals posited a Manichean theory of two worlds: civilized societies that had attained individuality, maturity of faculties and the capacity to be guided to their own improvement, and societies outside History, mired in stagnation and despotism of custom. Individuality and civilization were seen as the unique achievement of the “European race,” and since the non-Europeans were moral and political infants, and thus below the age of consent, a “paternal despotism” by a “superior people” was found perfectly “legitimate” and in the natives’ interest.<sup>13</sup> Colonial rule was to facilitate their transition to a “higher stage of development” and to train them in “what [was] specifically wanting to render them capable of higher civilization.”<sup>14</sup> Colonial subjugation would bring the colonized into History because “[i]nferior races are raised by living in political union with races intellectually superior.”<sup>15</sup> A typology of savagery, barbarianism and civilization as a hierarchy of the historical stages of man was posited, bringing geography and History together in a generalized scheme of European superiority that identified civilization with race.<sup>16</sup> The result was a grammar of racial difference that found liberalism to be underwritten by the colonial script.

The modern grammar of racial difference, inaugurated by History and supplemented by liberal exclusions, had four inter-linked premises: (i) that there is an essential difference between Europeans and other races in the world; (ii) that there is a racial hierarchy with the European at the top, followed by Asians, African and aboriginals, in a descending order; (iii) that Europe, being the subject of History, had the right, nay the duty, to govern other races, to impregnate them with reason, progress and the rule of law; and (iv) that the salvation of lesser races rested in subjugation by Europe, to aspire to Europe’s present as their future, this being the only path to enter History.

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12. See, e.g., JOHN LOCKE, *THOUGHTS CONCERNING EDUCATION* (1880).

13. J. S. MILL, *UTILITARIANISM, LIBERTY AND REPRESENTATIVE GOVERNMENT* 224, 382 (1912).

14. *Id.* at 199. See also Bhikhu Parekh, *The West and Its Other*, in *CULTURAL READINGS OF IMPERIALISM: EDWARD SAID AND THE GRAVITY OF HISTORY* 173 (Keith Ansell-Pearson et al. eds., 1997).

15. LORD ACTON, *supra* note 10, at 31.

16. See J. S. MILL, *1 DISSERTATIONS AND DISCUSSIONS, POLITICAL, PHILOSOPHICAL, AND HISTORICAL* 160-205 (1859).

## II. THE RULE OF COLONIAL DIFFERENCE & THE CONSTRUCTION OF RACE

For modern knowledge/power in its colonial career in general, and for the consolidation of the grammar of racial difference in particular, India furnished a "laboratory of mankind."<sup>17</sup> For the classical ethnological discourse, India was "not merely a source . . . but the very center of its debates."<sup>18</sup> The colonial engagement with the question of race in India brings into sharp relief three interrelated processes: (1) that Europe's colonies furnished a privileged terrain where disciplinary orders and techniques informed by the modern grammar of racial difference were forged; (2) that colonial constructions of race were always unstable, malleable, and contingent; and (3) that plasticity of colonial racial stereotypes issued from the changing exigencies of colonial rule with the only constant being the imperative to maintain colonialism as a rule of difference and domination.

### A. *Colonial Regime and Racial Difference*

Taking its lead from the European grammar of racial difference, colonial rule was premised upon the exclusion of the colonized from humanity as essential to their exclusion from institutions of political sovereignty. Colonialism is absolute government, founded, not on consent, but on conquest. Consequently, the modern regime of power in its colonial career was "destined never to fulfill its normalizing mission, because the premise of its power was the preservation of the alienness of the ruling group."<sup>19</sup> The universalist claims of modernity floundered in the colony; the rule of law yielded to "the rule of difference,"<sup>20</sup> a rule whereby, across differently inflected positions within colonial discursive and institutional practices, the colonized are represented as inferior, as radically Other. Race, constituted as the defining signifier of the difference between the colonizer and the native, reconciled Europe's "civilizing mission" with violence of colonialism. Construction of racial difference ensured that in the colony, the promise of modernizing transition from the "rule of force" to the "rule of law" was most pronounced in its breach, and the Enlightenment's developmental march to reason and freedom did not materialize.

I reject the claim that modern power in its colonial career simply

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17. C. Pinney, *Colonial Anthropology in the "Laboratory of Mankind,"* in *THE RAJ: INDIA AND THE BRITISH 1600-1947*, at 252 (C. Bayly ed., 1990).

18. THOMAS R. TRAUTMANN, *ARYANS AND BRITISH INDIA* 3 (1997).

19. PARTHE CHATTERJEE, *THE NATION AND ITS FRAGMENTS: COLONIAL AND POSTCOLONIAL HISTORIES* 18 (1993).

20. *Id.* at 16-26.

replicates its evolution in the metropole.<sup>21</sup> Modernity flounders in the colony due to the racial divide. For example, in India, "the more the logic of a modern regime of power pushed the processes of government in the direction of a rationalization of administration and the normalization of the objects of its rule, the more insistently did the issue of race come up to emphasize the specifically colonial character of British dominance."<sup>22</sup> The rule of difference, marked by race, rendered the colonial state fundamentally different from the parent metropolitan state. While "the metropolitan state was hegemonic in character with its claim of dominance based on a power relation in which the moment of persuasion outweighed that of coercion, . . . the colonial state was non-hegemonic with persuasion outweighed by coercion in its structure of dominance."<sup>23</sup> This directly effected the relationship of law with both the state and society. In the colony "law was a department of the executive,"<sup>24</sup> never achieving the autonomy envisaged by liberal designs of governance, even when formally incorporated in projects of macro social engineering.<sup>25</sup> For the colonizer, while "[o]ur law is in fact the sum and substance of what we have to teach them . . . it is a compulsory gospel which admits of no dissent and no disobedience."<sup>26</sup> To accentuate the rule of racial difference, legally sanctioned sites of segregation between the colonizers and the colonized proliferate. For example, vagrancy laws called for the deportation of whites whose deviant behavior undermined the mystique of their race; Cantonments Acts designed urban spaces to ensure segregation; Contagious Diseases Acts contained inter-racial sexual relations; and judicial procedures prohibited natives to sit in judgment over the colonizers.<sup>27</sup> The rule of racial difference as a

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21. See David Scott, *Colonial Governmentality*, 43 *SOCIAL TEXT* 191 (1995).

22. CHATTERJEE, *supra* note 19, at 19.

23. RANAJIT GUHA, *DOMINANCE WITHOUT HEGEMONY: HISTORY AND POWER IN COLONIAL INDIA* xii (1997).

24. D.A. Washbrook, *Law, State and Agrarian Society in Colonial India*, 15 *MODERN ASIAN STUDIES* 649, 714 (1981). See also David Washbrook, *The Rhetoric of Democracy and Development in Late Colonial India*, in *NATIONALISM, DEMOCRACY AND DEVELOPMENT: STATE AND POLITICS IN INDIA* 38 (Sugata Bose and Ayesha Jalal eds., 1997).

25. See, e.g., RANAJIT GUHA, *A RULE OF PROPERTY FOR BENGAL: AN ESSAY ON THE IDEA OF PERMANENT SETTLEMENT* (1963), for the scheme for transformation of Indian society under principles drawn from British Whig political and European Physiocratic economic theory. See also RADHIKA SINGHA, *A DESPOTISM OF LAW: LAW AND JUSTICE IN EARLY COLONIAL INDIA* (1998).

26. ERIC STOKES, *THE ENGLISH UTILITARIANS AND INDIA* 302 (1959) (quoting Fitzjames Stephen).

27. See, e.g., D. Arnold, *European Orphans and Vagrants in India in the Nineteenth Century*, 1 *J. OF IMPERIAL AND COMMONWEALTH HISTORY* 7 (1979); KENNETH BALLHATCHET, *RACE, SEX AND CLASS UNDER THE RAJ: IMPERIAL ATTITUDES AND POLICIES AND THEIR CRITICS, 1793-1905* (1980); CHATTERJEE, *supra* note 19, at 20-26; and VEENA TALWAR OLDENBURG, *THE MAKING OF COLONIAL LUCKNOW, 1856-1877* (1984).



structural imperative and coercion as the primary instrumentality of governance, furnished the context within which colonial constructions of race unfolded. These constructions simultaneously legitimated colonialism and dissipated opposition to it by justifying Indian subjugation in terms of white superiority. They bore traces of the Enlightenment's *libido sciendi*, its lust for knowledge,<sup>28</sup> that rests on the premise that everything about nature and humans could be discovered by application of reason. Contrary to the fiction of pure uninterested reason, however, this knowledge production was conditioned by prevailing views of race in Europe, imperatives of colonial rule, and a distrust of native knowledge.

### B. *Colonial Power/Knowledge and the Legible Colonized Body*

The high noon of British rule in India coincided with the zenith of racial theories in Europe. In vogue were assertions like "[r]ace is everything: literature, science, art - in a word, civilization, depends upon it,"<sup>29</sup> and that "[a]ll is race; there is no other truth."<sup>30</sup> It was in the context of Europe's colonial expansion that modern disciplines of geography, anthropology, history, and literature developed to make the expanding world intelligible and manageable. "Scientific racism," which dominated European thought, saw itself as based on "'science,' the body of knowledge rationally derived from empirical observation, then supported the proposition that race was one of the principal determinants of attitudes, endowments, capabilities and inherent tendencies among human beings. Race, thus, seemed to determine the course of human history."<sup>31</sup> The premise was that each person literally embodied his racial and cultural identity, and that bodies were legible.<sup>32</sup> The goal of colonial sciences was to discover the origins and patterns of the behavior of natives. The key to this knowledge was seen in the study of actual physical characteristics. This mapping of culture within physiology perfectly suited the colonizers' drive to erect a framework of categories which allowed them to understand India in terms of a hierarchy of races/castes/tribes/nations which had discernible features and definable limits, and to catalogue material evidence of behavior patterns and political loyalties. The result was the establishment of a framework for the inspection of natives' bodies, thereby bringing to bear the force of knowledge/power upon them.

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28. See ERNST CASSIRER, *THE PHILOSOPHY OF THE ENLIGHTENMENT* 14 (1964).

29. ROBERT KNOX, *THE RACES OF MEN: A FRAGMENT* v (1850).

30. BENJAMIN DISRAELI, *TANCRED, OR THE NEW CRUSADE* 153 (1847).

31. PHILIP D. CURTIN, *THE IMAGE OF AFRICA: BRITISH IDEAS AND ACTIONS, 1780-1850*, at 2 (1964).

32. See generally M. Shortland, "Skin Deep: Barthes, Lavater and the Legible Body, 14 *ECONOMY & SOCIETY* 273 (1985).

The colonizer was the subject of this knowledge production; the native only the object who furnished the body on which colonial power was to be inscribed. The natives were held not to be "safe guides . . . to their own past history," and colonial ethnologists bemoaned the ahistorical Indian's lack of "acquaintance with his history."<sup>33</sup> Distrust of the native was compensated by trust in science; plaster casts, photography, fingerprinting, and anthropometry found in data transcribed from the outer physical forms of Indians an effacement of all subjectivity and unreliability.

A large colonial apparatus occupied itself with classifying people and their attributes, with censuses, surveys, ethnographies, recording of transactions, marking spaces, establishing routines, and standardizing practices. Colonial disciplines like anthropology, ethnology, physical anthropology, anthropometry, comparative philology, and techniques like finger printing, cranial measurements, facial angles, nasal and cephalic indexes, brain volume and brain weight became the means whereby the heterogeneity created by the variety of social groups in India gave way to a reassuring certainty which could be ordered legibly and clearly in the "living museum of mankind."<sup>34</sup> Measurements of skulls of "hereditary criminal," plaster casts of "aboriginal tribes," photographic records of "the people of India," and live specimens of "Indian subjects," added up to "the dominant museological mode of looking at India."<sup>35</sup> Claims of inscription of social status in the permanent physical exteriors of Indians' bodies proliferated. The search was for a sociological form of fingerprinting - which itself was discovered in colonial India as a technology of discipline and control to counter "slippery facts," and "distrust of all evidence tendered in Court."<sup>36</sup>

### C. *Racializing the Colonized: Malleable Classifications & Slippage*

The sociology of ethnicity and race is rightly considered "a theoretical minefield."<sup>37</sup> The problem is compounded by "chronocentrism" or "presentism," namely, the tendency to interpret other historical periods

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33. W. W. HUNTER, *ANNALS OF RURAL BENGAL* 3 (1897).

34. The idea that India was a large museum or exhibition recurs continually in nineteenth and early twentieth century texts. See Pinney, *supra* note 17, at 262 n.6.

35. *Id.* at 255. This mode "stressed the discrete and describable nature of India as an aggregate of things which could be understood through strategies of 'typicality,' 'miniaturization' and, above all, 'display' with its continual assumption of knowledge to be gained through visibility." *Id.*

36. WILLIAM JAMES HERCHEL, *THE ORIGINS OF FINGERPRINTING* 7 (1916).

37. David A. Washbrook, *Ethnicity and Racism in Colonial Indian Society*, in *RACISM AND COLONIALISM: ESSAYS ON IDEOLOGY AND SOCIAL STRUCTURE* 143 (Robert Ross ed., 1982).

in terms of concepts, values and understandings of the present.<sup>38</sup> Competing and conflicting modern theories of race make for differing ways in which the concept is used in specific contexts. This elasticity lent by the very vagueness of the concept may well have made for its tenacity. Nowhere was this inchoate nature of the modern concept of race more evident than in colonial India, where it was used to describe a variety of religious, caste, tribal, national and ethnic identities. The end product of racial knowledge-production was racial stereotypes that were always unstable, contingent and malleable, always available to be turned on their head, depending upon who was using them and for what purpose.<sup>39</sup>

Inhabitants of India display a kaleidoscopic diversity of physical attributes, combined with an almost endless variety of languages, religious beliefs, cultural practices, historical memories, and social orders spread over a continental geographical expanse. For the double binary of fair/dark and civilized/savage, India presented an enigma because of its intermediate location, both in the scale of civilization as defined, for example, by Hegel and Mill,<sup>40</sup> and for the variety of complexions lying between the extremes of the scale of physical types defined by race science. This heterogeneity precluded normalization of the colonized through any single analytical model, or any simple binary application of the grammar of racial difference. The master discourse of racial difference, then, could be maintained only by introducing other analytical categories and classification schemes, while reading race into these. The colonial response was to construct categories of caste, tribe, nation and communal/religious groups, to read race into them, and to locate them within the hierarchical order of History. Often categories of race, caste, tribe, nation, language, and religion were conflated and even used interchangeably. The result was a contextual construction of race, remarkable for its contingency, plasticity, and malleability. The structure of this construction involved: (i) slippage of classificatory categories, whereby "race," "caste," "tribe," "stock," and "nation," were used interchangeably; (ii) racialization of the constructs, whereby all these categories were posited as being essentially biological and hereditary, questions of blood and descent; (iii) a two-tier scheme of racial hierarchy, under which while all natives were deemed racially inferior to the colonizers' race,

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38. Michael Banton, *The Idiom of Race: A Critique of Presentism*, 2 RESEARCH IN RACE AND ETHNIC RELATIONS 21 (1980).

39. The racist stereotype is after all always "curiously mixed and split, polymorphous and perverse, an articulation of multiple beliefs. . . what is being dramatized is a separation - between races, cultures, histories, within histories - a separation between before and after that repeats obsessively the mythical moment of disjunction." HOMI BHABHA, *THE LOCATION OF CULTURE* 82 (1993); see also Stanley Lieberman, *Stereotypes: Their Consequences for Race and Ethnic Interaction*, 4 RESEARCH IN RACE AND ETHNIC RELATIONS 113 (1985).

40. See RONALD INDEN, *IMAGINING INDIA* 43-48 (1990).

racialized hierarchies were posited among the colonized; and (iv) legitimization of colonialism, whereby colonial rule was seen as diffusing progressive attributes of the colonizers' race in order to save the native from the degradation induced by his own race.

The contingent and malleable nature of colonial construction of race was betrayed by the theoretical knots the colonizers tied themselves into, in the face of suggestions of racial affinity with the colonized. In the late eighteenth century, anxieties and desires of modern Europe's incessant search for national origins led to the discovery of an ancestral "Indo-European" language. This led to theses about common ancestry of tribes of the "Aryan race," which supposedly had conquered and colonized India, Persia and Europe around 2000 B.C. Estimates of the continuity of Indo-European languages implied that modern speakers of these languages, which included inhabitants of northern India, were descendants of the ancient ones, hence members of the common Aryan race.<sup>41</sup> Soon a derivative Aryan invasion theory of Indian civilization held the field that India's civilization was produced by the clash and subsequent mixture of light-skinned civilizing Aryan invaders and dark-skinned barbarian aborigines. The "chameleon-like character of . . . this European theory [which] was 'retrofitted' to the Indian landscape,"<sup>42</sup> was apparent in the shifts of its purported evidentiary support from linguistic criteria to anatomical measurements to civilizational logic. While archeological research, particularly the discovery of the Indus Civilization "should have put paid to the racial theory of Indian civilization,"<sup>43</sup> it proved remarkably durable and resistant to new information.

The Aryan race theory raised some difficult questions regarding British colonial rule over India because the racial affinity of some Indians with the British posited by the theory could render British rule over a "brother race" unjustifiable. The colonial response was to modify the theory with theses of India's historical inferiority to justify colonialism and to convince the natives not to reject it. The Indian "inferior though

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41. See THOMAS R. TRAUTMANN, *ARYANS AND BRITISH INDIA* (1977); Joan Leopold, *British Applications of the Aryan Theory of Race to India, 1850-1870*, at 89 *ENGLISH HISTORICAL REV.* 578 (1974); and, Joan Leopold, *The Aryan Theory of Race*, 7 *INDIAN ECO. & SOCIAL HISTORY REV.* 271 (1970). India contains three major language families. First, the Indo-Aryan family, consisting of the descendants of Sanskrit, occupy most of the north and the western coast. Second, the Dravidian family, dominating South India, has some representation in Central India. Third, the Austroasiatic family is represented in parts of Central India and the northeastern regions.

42. NAVARATINA S. RAJARAM, *THE POLITICS OF HISTORY: ARYAN INVASION THEORY AND THE SUBVERSION OF SCHOLARSHIP* XII, 146 (1995).

43. TRAUTMANN, *supra* note 18, at 215. See also SHIRIKANT G. TALAGERI, *THE ARYAN INVASION THEORY: A REAPPRAISAL* (1993); N. R. WARADAPANDE, *ARYAN INVASION - A MYTH* (1989); K.D. THE PROBLEM OF ARYAN ORIGINS (2d ed. 1992); and LEON POLIAKOV, *THE ARYAN MYTH* (1974).

Aryan" explanations fell into two classes - those which attributed Indian inferiority to the influence of hereditary racial factors and those which attributed it to the influence of physical or cultural environment. The hereditarist argument contended that blood, society, and languages of the numerous pre-Aryan inhabitants of India, represented by contemporary Dravidians and aboriginal tribes, had, despite the Aryan caste system, defaced the pure Aryan features of Brahmanic physiognomy. Environmental arguments based on considerations of physical surroundings, attributed Indians' darker skin color, supposed physical effeteness, and the stagnant and introspective society to such "Oriental" peculiarities as excessive heat, lack of cold winters, lack of variety of terrain and isolation from vigorous peoples. Furthermore, non-Aryan institutions were implicated for having impinged upon the Indo-Aryan culture, arresting its growth, or causing its recession. For some the decline and stagnation of Indian Aryans rested on the lack of diffusion of a non-Aryan institution, Christianity, which the European Aryans, more than any other people, had made their own.

The Aryan race theory, having developed in the context of proliferation of evolutionary theories in Europe, contained an evolutionary core. The theory posited in effect that only Aryan nations could evolve, for evolution implied a measure of stability as well as an impetus for gradual change that other races did not have. Aryan evolution, of course, resulted in progress; since India obviously had not progressed, it could not have evolved to fully develop its latent Aryan qualities due to contaminations induced by the indigenous non-Aryan races. Henry Maine, for example, emphasized that the condition of contemporary, non-progressive, Aryan India was basically one of arrested growth; India was still at the stage at which progressive Western Aryan societies had been when they originated.<sup>44</sup> Natives were advised to "accept with all its consequences, the marvelous destiny, which has brought one of the youngest branches of the greatest family of mankind from the uttermost ends of the earth to renovate and educate the older."<sup>45</sup> Through colonialism then, "the younger Aryan returns . . . not solely to rule over the elder . . . but to teach him, . . . the lessons of a superior wisdom, a purer justice, and a loftier morality."<sup>46</sup> In this context, the native had only to be grateful for the condition of subjection to the colonizer.

In the colonial construction of race within the framework of the modern grammar of racial difference, one discerns "the general episte-

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44. HENRY S. MAINE, *LECTURES ON THE EARLY HISTORY OF INSTITUTIONS* 225-26 (3d ed. 1880).

45. HENRY S. MAINE, *VILLAGE-COMMUNITIES IN THE EAST AND WEST* 294 (1889).

46. WILLIAM FARRAR, *FAMILIES OF SPEECH* 144 (1870).

mic violence of imperialism, the construction of a self-immolating colonial subject for the glorification of the social mission of the colonizer."<sup>47</sup> This violence was then deployed in specific sites of colonial governance and thereby lent itself to the violence of law, both "the founding violence, the one that institutes and positions law . . . and the violence that conserves, the one that maintains, confirms, insures the permanence and enforceability of law."<sup>48</sup> One form that this process took was the deployment of racialized stereotypes of natives as scaffolding for legally sanctioned regimes for discipline and control of myriad facets of native life. What follows is a brief account of four such specific deployments.

### III. DEPLOYMENTS OF COLONIAL RACIAL STEREOTYPES.

#### A. *The Martial Races*

The theory of "martial races" grew out of two colonial contingencies in India, the experience of the 1857 Indian Revolt, and the developing imperial contest with Czarist Russia. The theory was predicated on the idea that martiality was an inherited trait, an aspect of "race" and "blood,"<sup>49</sup> and that while the "military instinct" was inherent in European races, especially the British, the same was not true of all the different races in India.

Before 1857, the colonial army in India was drawn predominantly from Bengal and the adjoining areas. "The native black troops" of Bengal were seen as "fine men" who "would not disgrace even the Prussian ranks."<sup>50</sup> The Indian Revolt of 1857 was to change all that. The Revolt, initiated by regiments of the Bengal Army, triggered a wide-spread agrarian revolt in north-eastern and north-central India, the main recruiting grounds of the Bengal Army. Indeed the Revolt was most intense in the very areas that had thus far supplied the best recruits to the Bengal Army.<sup>51</sup> Following the suppression of the Revolt, deliberations to reorganize the Indian Army centered around loyalty and disloyalty displayed by different sections of the native population. In 1857, while most regiments of the Bengal army had revolted, the British had successfully raised fresh battalions mainly from the Punjab and Nepal that served

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47. Gayatri Chakravorty Spivak, *Three Women's Texts and a Critique of Imperialism*, 12:1 CRITICAL INQUIRY 243, 251 (1985).

48. Jacques Derrida, *Force of Law: The "Mythical Foundation of Authority,"* in DECONSTRUCTION AND THE POSSIBILITY OF JUSTICE 31 (Drucilla Cornell, et al. eds., 1992).

49. A.M. BINGLEY, *THE CASTE HANDBOOKS FOR THE INDIAN ARMY: BRAHMANS* (1918). The Handbooks claimed unequivocally that "fighting capacity is entirely dependent on race. . ." *Id.* at 47.

50. T. A. HEATHCOTE, *THE INDIAN ARMY: THE GARRISON OF BRITISH IMPERIAL INDIA 1822-1922*, at 83-84 (1974) (quoting Lord Cornwallis).

51. C.A.BAYLEY, *INDIAN SOCIETY AND THE MAKING OF THE BRITISH EMPIRE* 85 (1988).

their new masters loyally. The post-1857 reorganization of the army entailed a dramatic fall in recruitment from the traditional recruitment areas in the east and south, and a corresponding rise in the numbers recruited from the north and the west. It was in this context that the so-called "martial races" theory became "not merely a colonial strategy, but a colonial obsession."<sup>52</sup>

Recruitment of Bengalis was prohibited. Almost overnight, the hitherto backbone of the colonial army, the Bengalis, became "feeble even to effeminacy" for whom "courage, independence, veracity are qualities to which his constitution and his situation are equally unfavorable."<sup>53</sup> Those from southern India were declared to "fall short, as a race, in possessing the courage and military instincts," and Punjab was anointed "the home of the most martial races of India."<sup>54</sup> The Commander in Chief took the view that "no comparison can be made between . . . a regiment recruited amongst . . . the warlike races of northern India and of one recruited amongst the effeminate races of the South."<sup>55</sup> The martial race theory was codified in a series of official Recruiting Handbooks for the Indian Army. In these manuals, Indians appeared not as individuals but as specimens; photographs of suitable recruit types were included, whose ideal measurements and physique were described in great detail.<sup>56</sup> The British saw some of their favorite martial races, particularly Rajputs and Punjabis, as descendants of the Aryan invaders. Caste and tribe were often equated with race, for example, in the case of Rajputs, who, it was held, had maintained their Aryan racial "purity" through the caste system.<sup>57</sup> Skull- and nose-measuring techniques of anthropometry also found their way into the handbooks.<sup>58</sup> The Aryan element of the martial race theory was closely associated with notions of racial purity. If fighting ability was hereditary, then racial mixing would produce only degeneracy and weakness. Colonial recruiting strategies, therefore, favored those groups who followed restrictive marriage practices and who thus promised to be racially pure.<sup>59</sup>

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52. DAVID OMISSI, *THE SEPOY AND THE RAJ* 12 (1994). See also D. Omissi, "Martial Races": *Ethnicity and Security in Colonial India 1858-1939*, 9 *WAR AND SOCIETY* 1, 12 (1991).

53. LEONARD GORDON, *BENGAL: THE NATIONALIST MOVEMENT 1876-1940*, at 6 (1974) (quoting Thomas Macaulay).

54. OMISSI, *THE SEPOY*, *supra* note 52, at 12 (quoting Commander in Chief of Madras Army and Report to the Parliament on the Indian Army 1879).

55. P. MASON, *A MATTER OF HONOUR: AN ACCOUNT OF THE INDIAN ARMY, ITS OFFICERS AND MEN* 345 (1974) (quoting Lord Roberts).

56. See, e.g., G.E.D. MOUAT, *HANDBOOKS FOR THE INDIAN ARMY: MADRAS CLASSES* (1938).

57. A.E. BARSTOW, *HANDBOOKS FOR THE INDIAN ARMY: SIKHS* appendix 5 (1928).

58. BINGLEY, *supra* note 49, at 50.

59. MASON, *supra* note 55, at 356-58. For example, those Sikhs were preferred who came

The martial race theory and the attendant recruitment policies did not so much recognize groups with propensity to martial skills as they created such groups. The Sikhs of Punjab are a case in point. Until the martial race theory propelled the racialized constructs of caste, tribe or religion as the organizing principle for the colonial army, the Hindu-Sikh distinction was not clearly marked, and Sikh identities, practices and beliefs of various sorts intermixed. It was the colonial Army that consolidated Sikhism as a separate religion and the Sikh as a separate identity.<sup>60</sup> Separate Sikh army units were formed, where strict observance of Sikh customs and ceremonies was required. As a result of the army's efforts to insure the conformity of recruits in the Sikh units to colonial cultural meanings of Sikhism as a separate religion and Sikhs as a martial species, "induction into the Indian army and into Sikh identity often [were] one and the same."<sup>61</sup> A colonial official noted that "Sikhs in the Indian army have been studiously 'nationalized' or encouraged to regard themselves as a totally distinct and separate nation. Their national pride has been fostered by every available means."<sup>62</sup> Sikh as a martial race was not discovered; it was created.

Two other changes in army recruitment policy, however, had to be reconciled with the martial race theory: the exclusion of emerging urban middle classes and the recruitment of Gurkhas of Nepal. In view of the emerging nationalist movement particularly in urban Bengal, it was decided to exclude the educated urban middle class from the army. Here "class" was added to race and caste in determining martial ability. The favored recruits were peasants, as they were considered politically conservative and less likely than city-dwellers to question authority. Colonial commentators now claimed that the martial races were intellectually backward. They talked of "the stupider martial races," and noted that these were "proverbially thick in the uptake."<sup>63</sup> These stereotypes were then matched against the urban and educated Bengalis, now posited as effeminate, sly, and scheming. Gurkhas of Nepal, on physical and linguistic grounds did not fit the Aryan explanation of the martial races theory either. To accommodate this anomaly a climate/environment variant of the martial race theory was enunciated. The argument was that as a general rule, and particularly in India, one finds warlike people in hilly, cooler climates, while in hot and flat regions races are timid, ser-

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from areas where they were a majority and hence less likely to be "weakened" by marrying Hindus. *Id.* at 352-54.

60. See RICHARD G. FOX, *LIONS OF THE PUNJAB: CULTURE IN THE MAKING* 140-59 (1985).

61. *Id.* at 142.

62. *Id.* at 142.

63. See, e.g., MACMUNN, *ARMIES OF INDIA* 136 (1980).



vile and not fit for soldiering.<sup>64</sup> The fact that this contradicted designation of Rajputs and Punjabis as martial races was not considered fatal to the theory.

Besides the 1857 Revolt, the other main determinant of the new recruiting policy was the emerging contest with Czarist Russia along the western reaches of colonial India. This triggered the position that "we should be culpable if we did not endeavor to replace the worst of our Native troops by men recruited from the warlike races."<sup>65</sup> Having recruiting areas close to the new forward lines made simple logistic sense. It was in this context that Punjab was recreated to fit the martial race theory, as a suitable source of soldiers through "the most extensive form of socio-economic and demographic engineering attempted by the British in South Asia."<sup>66</sup> The process involved four interrelated maneuvers. First, hydraulic "canal colonies" were created in western Punjab, turning the desert wastes and pastoral savanna into a major base of commercialized agriculture. Second, through in-migration from other parts of Punjab of selected families and clans that had remained loyal to the British during the Great Revolt of 1857, a new landed aristocracy having political allegiance to the British was created. These new landowners and their peasants were designated "agricultural castes," on whom the British relied for political support, revenue returns, military recruitment, and raising of cattle and horses for the military. Third, legislation forbade the passing of land from "agricultural castes" to non-agricultural castes,<sup>67</sup> to protect the loyal agriculturists from inroad by incipient urban commercial elements who were increasingly becoming sympathetic to the nationalist cause. Last, recruitment efforts systematically targeted towards rural areas and land-grants made to ex-soldiers ensured the creation of a culture of soldiering in the canal colonies. By the time of decolonization, nearly half of the colonial Indian army was recruited from the Punjab.<sup>68</sup> Having imagined a martial Punjab to suit colonial contingency, colonialism had now created a Punjab to fit the martial race theory.

Both India and Pakistan, successor states to colonial India, continue to bear traces of the policy of recruitment primarily from the martial

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64. See Lione Caplan, *Martial Gurkhas: The Persistence of a British Military Discourse on 'Race'*, in PETER ROBB, 260; L. Caplan, "Bravest of the Brave:" Representations of "the Gurkhas" in *British Military Writings*, 25 MODERN ASIAN STUDIES 571 (1991), and H.R.K. GIBBS, *THE GURKHA SOLDIER* (1947).

65. K.M.L. SAXENA, *THE MILITARY SYSTEM OF INDIA* 101 (1974).

66. IMRAN ALI, *THE PUNJAB UNDER IMPERIALISM 1885-1947*, at 237 (1988).

67. See N.G. BARRIER, *THE PUNJAB ALIENATION OF LAND BILL OF 1900* (1966).

68. ALI, *supra* note 66, at 4.

races.<sup>69</sup> In the case of Pakistan, its constitutional saga is one of increasing praetorianism and "constitution-building" and "nation-building" efforts primarily aimed at denying political power to the Bengali majority and erasing their cultural identity by assimilating them into one Pakistani "state-nation." One stratagem to accomplish this goal was to resurrect the colonial discourse of martial and non-martial races in India. The ruling elite claimed that their belonging to the martial race made them natural leaders, while the Bengalis could be legitimately denied equal status because they "have all the inhibitions of down-trodden races."<sup>70</sup> While the Bengali race was disparaged for its "complexes, exclusiveness, suspicion and a sort of defensive aggressiveness," those from the Western wing were posited as "probably the greatest mixture of races found anywhere in the world."<sup>71</sup> It was this racialized construction of a "state-nation" that culminated in the genocide of Bengalis by the Pakistani military in 1971. Given that many post-colonial societies are multi-ethnic and many post-colonial states have praetorian tendencies, the martial race theory born of colonial imperatives continues to haunt public policies regarding induction into public employment and even constitutional norms of governance.

### B. *The Criminal Tribes*

Racist notions that a person literally embodied his character combined with colonial propensity to reduce the natives to their racial essences to suit the exigencies of colonial rule, produced a remarkable set of legal regimes in colonial India under which whole communities were designated criminals by birth. Normal legal processes then gave way to extraordinary regulations for their prosecution, discipline, surveillance, pacification and eradication.

The Criminal Tribes' Act (Act XXVII of 1871)<sup>72</sup> was promulgated "to provide for the registration, surveillance and control of certain tribes

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69. STEPHEN P. COHEN, *THE INDIAN ARMY: ITS CONTRIBUTION TO THE DEVELOPMENT OF A NATION* 47 (1971), and STEPHEN P. COHEN, *THE PAKISTAN ARMY* 42, 69 (1984).

70. MOHAMMAD AYUB KHAN, *FRIENDS NOT MASTERS* 187 (1967). General Ayub Khan was the military dictator of Pakistan from 1958 to 1969.

71. *Id.*

72. See generally M. KENNEDY, *THE CRIMINAL CLASSES IN INDIA* (2d ed. 1985); E.J. GUNTHORPE, *NOTES ON CRIMINAL TRIBES RESIDING IN OR FREQUENTING THE BOMBAY PRESIDENCY, BERAR AND THE CENTRAL PROVINCES* (1882); H.K. KAUL & L.L. TOMKINS, *REPORT ON QUESTIONS RELATING TO THE ADMINISTRATION OF CRIMINALS AND WANDERING TRIBES IN THE PUNJAB* (1914); Sanjay Nigam, *Disciplining and Policing the 'Criminal by birth', Part I: The Making of a Colonial Stereotype - The Criminal Tribes and Castes of North India*, 27:2 *THE INDIAN ECONOMIC AND SOCIAL HISTORY REV.* 131 (1990); and Sanjay Nigam, *Disciplining and Policing the 'Criminal by birth', Part II: The Making of a Colonial Stereotype - The Criminal Tribes and Castes of North India*, 27:3 *THE INDIAN ECONOMIC AND SOCIAL HISTORY REV.* 257 (1990).

. . . [designated] criminal." By the early twentieth century, 13 million people were classified as such.<sup>73</sup> The Act empowered local governments to designate "any tribe, gang or class of persons" a "criminal tribe" if they were "addicted to the systematic commission of non-bailable offenses." A register was prepared detailing the names of all individual members of the tribe designated criminal under the Act, their personal appearance, place of residence, offenses committed and sentences. The register was supervised by the District Magistrate, and notices of registration were posted in the villages where the tribe resided. Once officially notified, these groups had no recourse to the judicial system for removal of this designation. Local officials were empowered to resettle criminal tribes to ensure their gainful employment, or to remove them to "a reformatory settlement."

The movement of criminal tribes was also restricted by a system of passes which specified the places where the holder of the pass might go or reside, and the police station where the holder would have to report his movements during the life of the pass. To enforce restrictions on movement, a roll-call was taken at irregular intervals by the Magistrate or his nominees. Additional provisions provided for inspection of places of residence of all those registered, the removal of any materials that could help conceal stolen property or obstruct surveillance, and for the designing of measures to maintain discipline in the reformatory settlements. If a member of a criminal tribe was apprehended outside the limits of his prescribed place of residence, he could be arrested without a warrant. Penalty for violating the pass system included rigorous imprisonment, fines and whipping. Children were separated from parents and kept in custody. To guard against passing of "criminal genes," intermarriage within a criminal tribe was prohibited. Many extraordinary administrative, legal, and penal regimes deployed by the Criminal Tribes Act, along with the notion of hereditary and biological propensity to crime, had their lineage in the earlier campaigns against the Thugs, "the most celebrated case of orientalist myth-making."<sup>74</sup> Penalties for "belonging to any gang of Thugs," for example, included branding on

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73. Anand A. Yang, *Dangerous Castes and Tribes and the Criminal Tribes Act and the Magahiya Doms of Northeast India*, in *CRIME AND CRIMINALITY IN BRITISH INDIA* 109 (Anand A. Yang ed., 1985).

74. C.A. BAYLY, *EMPIRE AND INFORMATION: INTELLIGENCE GATHERING AND SOCIAL COMMUNICATION IN INDIA 1780-1870*, at 173 (1996). In the colonial parlance, 'thugs' were believed to be a hereditary criminal fraternity, resting on beliefs and rites centered around inveigling and strangling travelers. See G. BRUCE, *THE STRANGLERS: THE CULT OF THUGGEE AND ITS OVERTHROW IN BRITISH INDIA* (1968); Radhika Singha, 'Providential' Circumstances: The Thuggee Campaign of the 1830s and Legal Innovation, 27 *MODERN ASIAN STUDIES* 83 (1993); and H. Gupta, *A Critical Study of the Thugs and their Activities*, 37:2 *J. OF INDIAN HISTORY* 167 (1959).

the forehead. By making a legible sign on the body, the colonizers created a material referent for assertions of legibility of bodies; the branding reconstituted the body to make its criminality legible.

In 1897, the Criminal Tribes Act was amended to grant local governments the right to establish a separate reformatory settlement for children under eighteen of parents designated members of a criminal tribe. Further amendments provided for stricter enforcement of punitive measures, empowered the administration to restrict members of "criminal tribes" to villages under police supervision, and required that all members of criminal tribes be fingerprinted. The Act was finally repealed in 1952, five years after decolonization.

The colonial campaign against the "criminal tribes" formed part of the post-1857 Revolt "aggressive legislation of the eighteen sixties and early seventies," under which coercive sanctions of the law were accentuated to maintain order and enhance control of the native society in order to preempt another revolt.<sup>75</sup> It was also a means to remold recalcitrant and, in the colonial view, unproductive communities into "useful" and law-abiding participant in the colonial economy. Many were put to work on tea and coffee estates and textile mills. The Act was used against other smaller communities - wandering gangs, nomadic petty traders and pastoralists, gypsies and forest-dwelling tribals; in short, it was used against a wide variety of marginals who did not conform to the colonial pattern of settled agriculture and wage labor. Paradoxically, the criminality of these people often stemmed from changes associated with colonial economic policies. For example, the introduction of a state-monopoly of salt trade hit hard many migrant petty traders, and new forest regulations prohibited traditional harvesting practices of forest-dwelling communities. Reformatory settlements for penal work were established for the "hereditary criminals," and a threefold classification was introduced: the "worst characters" were removed to reformatory jails; the "less desirable" ones were transferred to emerging industrial sites; and the "best-behaved members" were placed on agricultural settlements.<sup>76</sup> Initially, the settlements were run by missionary and philanthropist organizations, and efforts were made to bring the inmates squarely within colonial constructs of major religious traditions of India. Finding the missionaries more interested in spiritual salvation than economic production, the government assumed control of the settlements, which were thereafter run by the Probation and Criminal Tribes

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75. STOKES, *supra* note 26, at 269. See also THOMAS R. METCALF, *THE AFTERMATH OF REVOLT: INDIA 1857-1870* (1964).

76. ALI, *supra* note 66, at 102. See also David Arnold, *White Colonization and Labour in Nineteenth-Century India*, II:2 J. OF IMPERIAL AND COMMONWEALTH HISTORY 133 (1983).

Officers. The Punjab government even sent more than 2,000 men from the ranks of the criminal tribes to the First World War, portraying service in the army "as the most honorable road to rehabilitation. . . [for criminals who were] so averse from honest labor and impatient of discipline."<sup>77</sup>

Notions of "dangerous classes" and "habitual criminals" developed in nineteenth century Europe as products of bourgeois anxieties to protect private property and the political order and the desire to recruit marginal sections of the society into the burgeoning industrial labor market.<sup>78</sup> The most important connection between the European idea of criminal classes and the colonial category of criminal tribes seems to be the insistent axiom that criminality was the preserve of one section of the subject population. The racialized vocabulary to describe colonial natives was remarkably like that used in the metropole to describe the lowest elements of the class order, the degraded class of criminals and casual laborers of European cities.<sup>79</sup> In India, however, this vocabulary was inserted into the colonial typology of overlapping categories of caste, race, and tribe, and each category was deemed concrete and measurable, possessing biologically determined immutable characteristics.

Plasticity of the concept of race and ever-changing exigencies of colonial rule led to anomalous results such as the same group being designated both a "martial race" and a "criminal tribe." The Mappilas of Malabar in southwestern India are an example. Descendants of Arab traders or Hindu converts to Islam, they were known for their poverty, low literacy rates, and tenacious and incessant agrarian unrest during the nineteenth century.<sup>80</sup> Within Malabar, they were considered "irredeemably 'lawless', 'turbulent' and criminal," and put under police surveillance, but elsewhere in India they were designated a "martial race."<sup>81</sup>

In the colonial construct of criminal tribes, one again sees the administrative exigencies within the rule of racial difference defining the contours of public policy. The scaffolding for the construct was fur-

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77. Nigam, *Disciplining and Policing*, *supra* note 72, at 163 (quoting Report on the Administration of the Criminal Tribes in Punjab, 1918 (1919)).

78. See YSABEL RENNIE, *THE SEARCH FOR CRIMINAL MAN: A CONCEPTUAL HISTORY OF THE DANGEROUS OFFENDERS* (1978), and E. P. THOMPSON, *THE MAKING OF THE ENGLISH WORKING CLASS* (1974).

79. See GARETH STEDMAN JONES, *OUTCAST LONDON: A STUDY IN THE RELATIONSHIP BETWEEN CLASSES IN VICTORIAN SOCIETY* (1971); Jean Comaroff & John Comaroff, *Homemade Hegemony*, in *ETHNOGRAPHY AND THE HISTORICAL IMAGINATION* 265 (1992).

80. See generally K. M. PANIKKAR, *AGAINST LORD AND STATE: RELIGION AND PEASANT UPRISINGS IN MALABAR 1836-1921* (1989).

81. David Arnold, *Bureaucratic Recruitment and Subordination in Colonial India: The Madras Constabulary 1859-1947*, in *IV SUBALTERN STUDIES* 13-14 (Ranjit Guha ed., 1985), and P. HOLLAND-PRYOR, *HANDBOOK ON THE INDIAN ARMY: MAPPILLAS OR MOPLAHS* (1904).

nished by the notion of hereditary and biological determination of conduct, and the intermingling of categories by the interchangeable use of "race," "caste," "tribe," and "nation."

### C. *The Meek Hindu: Cheaper Than a Slave*

Colonialism started integrating India into the modern global system of production and accumulation. As part of this process, starting in the eighteenth century, Indian labor was deployed in Europe's other colonies. The varied institutional forms of this deployment included slavery, penal transportation, and indentured labor. Between 1834 and 1937, 30 million Indians left India as part of the global division of labor, and just under 24 million returned.<sup>82</sup> Most of this migration formed part of the "coolie system" that came into existence in the early nineteenth century, under which Asian labor, primarily from India and China, was deployed in Africa, the Caribbean, Southeast Asia and the South Pacific. Part of this migration was indentured labor: 1.5 million Indians went overseas as indentured labor between 1834 and 1920.<sup>83</sup> The abolition of slavery in the European colonies in early 19th century created a labor crisis in plantation colonies by disturbing the critical ratio between abundant land and cheap labor. The perceived need for "a new system of slavery,"<sup>84</sup> was met by importing laborers from India whose "cost [was] not one-half that of a slave."<sup>85</sup> The early consensus was that the planters had found in the meek Hindu a ready substitution for the Negro slave he had lost.<sup>86</sup> Besides providing cheap labor, the Indian workers were to be the medium through which planters expected to reassert control and discipline over the emancipated slaves. The unfolding of this stratagem was accompanied by enabling constructions of racialized identities of African and Indian labor.

Racialized disparaging portrayals of African labor became orthodoxy: Africans were portrayed as lazy, unreliable, untruthful, and unable or unwilling to understand or honor a contract.<sup>87</sup> Set off against these

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82. KINGSLEY DAVIS, *THE POPULATION OF INDIA AND PAKISTAN* 99, table 35 (1951).

83. See Tayyab Mahmud, *Migration, Identity & the Colonial Encounter*, 76 OREGON L. REV. 633, 639-56 (1997).

84. HUGH TINKER, *A NEW SYSTEM OF SLAVERY: THE EXPORT OF INDIAN LABOUR OVERSEAS 1830-1920* (1974).

85. S.G. CHECKLAND, *THE GLADSTONES: A FAMILY BIOGRAPHY 1764-1851*, at 318 (1971).

86. P.C.Emmer, *The Meek Hindu; Recruitment of Indian Labourers for Service Overseas, 1870-1916*, in *COLONIALISM AND MIGRATION: INDENTURED LABOUR BEFORE AND AFTER SLAVERY* 187 (P.C. Emmer ed., 1986).

87. For racialized colonial myths about the work ethic of "natives," see SYED HUSSEIN ALATAS, *THE MYTH OF THE LAZY NATIVE: A STUDY OF THE IMAGE OF THE MALAYS, FILIPINOS AND JAVANESE FROM THE 16TH TO THE 20TH CENTURY AND ITS FUNCTION IN THE IDEOLOGY OF COLONIAL CAPITALISM* (1977).

portrayals, a racialized identity of Indian labor was posited, using overlapping categories of race, caste, tribe, stock and nation. Indians were extolled for their docility, industriousness, familiarity with agriculture, strong family ties, respect for authority, and respect for the sanctity of contract.<sup>88</sup> These constructions, however, did not last very long. Once Indians were on the plantations and had adopted strategies of self-preservation and resistance, planters' praises were leavened with distaste and dissatisfaction. Indians, they now observed, were avaricious, jealous and less robust, not to mention dishonest, idolatrous, and filthy. As dissatisfaction with Indians spread among the planters, and as they began looking into opportunities to recruit workers from China, the Indians came to be increasingly and unfavorably compared with the Chinese. Now the Chinese were held out as "'fully alive to the necessity of authority for their regulation and control . . . generally tractable and manageable,' strong, tough, 'not averse to foreigners' . . . 'highly intelligent and discerning, steady laborers, and well versed in tillage of the soil.'"<sup>89</sup> Both of the contradictory identities of Indian labor were produced in the context of a hierarchical racial division of labor, under which the European planters, African ex-slaves, Indian indentured and Chinese coolies were constituted in relation to each other. Furthermore, the assigned identity attributes were posited as essential, immutable, and fixed products of biological determinism.

The racialized identity formation of Indian indentured labor had a number of implications. As an essential building bloc of the racialized nature of specific deployment of Indian indentured labor, Indians were typically sandwiched between the European colonizers and the natives, as "colonial middle-men." Informed by the global hierarchy of races, Indians were often assigned work in the tertiary sectors of the economy that was not considered worthy of the colonizers and from which the natives were barred. As part of the legally mandated systems of racial segregation, outside the context of work Indians maintained a distinct social existence. Natives saw the Indians as "house niggers," tools of European colonial control, and many Indians remained hostile or ambivalent towards decolonization movements in these colonies. A legacy of these divisions is the continuing political conflicts between Indian settlers and indigenous populations in Africa, the Caribbean, Southeast Asia and the South Pacific. The colonial legal regimes established to regulate indentured labor were both elaborate and ever-changing. Exten-

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88. See Madhavi Kale, *Projecting Identities: Empire and Indentured Labor Migration from India to Trinidad and British Guyana, 1836-1885*, in *NATION AND MIGRATION: THE POLITICS OF SPACE IN SOUTH ASIAN DIASPORA* 73, 77-78 (Peter van der Veer ed., 1995).

89. *Id.*

sive laws and administrative offices were created to regulate recruitment, contracting, transportation, employment, and post-indenture repatriation. The British government, the colonial authorities of India and the plantation colonies, and the colonial employers all had fluctuating and often conflicting interests. This injected contingency and instability into the legal regimes and the system finally succumbed to changing demands of the international labor markets and the Indian nationalist movement. The indenture system played a crucial role in forging an Indian identity and the development of Indian nationalism. Labor transported from India became "Indian" in the context of its being sandwiched between European colonizers and the natives. In pre-colonial India, identities coalesced around religious, caste, ethnic, linguistic and regional differences. In the indenture system, heterogeneous labor drawn from India found itself similarly positioned by this regime of colonial economy. Institutional and discursive practices accompanying indenture constituted this heterogeneity as a singularity. Differences were downplayed by the indentured as they forged a collective identity in resistance to a shared experience. Indian identity, thus, became a field of possibility through suppression of internal difference, occasioned by similarities of conditions created by the colonial regime of indentured labor. Not surprisingly, the indenture system furnished the first sustained target for the nationalist movement during its embryonic phase.

This story of Indian indentured labor raises many questions of contemporary relevance. To what extent does the global labor market in the phase of much heralded globalization remain racialized? Can we locate race in legal regimes and normative conventions that juxtapose unbridled mobility of capital with relative immobility of labor? How are inter-racial and inter-ethnic conflicts in the post-colonial societies rooted in colonial strategies of divide and rule? How does the racialized diasporic existence effect identity formation of different racial and ethnic groups?

#### D. *Race-Nation & Its Discontents*

There is a general consensus that modern nationalism is "a doctrine invented in Europe at the beginning of the nineteenth century,"<sup>90</sup> and in its global reach, "an importation from Europe clearly branded with the mark of its origin."<sup>91</sup> This consensus, however, yields to a disagreement between those for whom nationalism is inconceivable except as a product of modernity,<sup>92</sup> and those who posit nationalism as a vehicle for the

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90. ELIE KEDOURIE, *NATIONALISM* 9 (1960).

91. ELIE KEDOURIE ed, *Nationalism in Asia and Africa* 29 (1970).

92. See, e.g., ERNEST GELLNER, *NATIONS AND NATIONALISM* 125 (1983).



resurgence of atavistic or pre-modern identities, a protest against modernity.<sup>93</sup> I believe that the tension between modernity and pre-modernity is a permanent structural feature of nationalism, this "modern Janus."<sup>94</sup> While locating itself in the story of liberty and reason as the agency of universal History, it often teams up with irrational chauvinism and xenophobia. Some see in this two types of nationalism: one, the product of the Enlightenment, "by and large rational rather than emotional", and the other, developed by the romantics, that saw the nation as a natural community, as "something sacred, eternal, organic, carrying a deeper justification than works of men."<sup>95</sup> The romantic variant of nationalism was often racialized, and discourse of race played a central role in myths of national origin.<sup>96</sup> Because nations were identified as naturally occurring groups identifiable by cultural difference, it was logically possible to assert that these symbols of nation were themselves grounded in race, that "blood or race is the basis of nationality, and that it exists externally and carries with it an unchangeable inheritance."<sup>97</sup> While for Lord Acton, nation was "an ideal unit founded on race,"<sup>98</sup> for Otto Bauer, the nation is "a community of descent: it is maintained by common blood . . . by a commonality of germ plasm. . ."<sup>99</sup> In nineteenth century Europe, a virtual blurring of distinctions between race and nation was the result.<sup>100</sup>

In the colonies, the European idea of race-nation often combined with Social Darwinism to deny nationhood and self-determination to the colonized. In colonial India, colonial constructions of the colonized, where categories of race, caste, tribe, nation, and religion were used interchangeably, were deployed to thwart nationalist aspirations. The racial undertones of these constructions were highlighted to show up multiple divisions that were held to deny Indians the status of one people/"volk"/nation, founded upon common "stock," and hence to deny them the political rights that accrue to nations. The colonized may have "had a right to law" but not "a right to self-determination . . . because

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93. See, e.g., ERIC J. HOBBSBAWM, *NATIONS AND NATIONALISM SINCE 1780: PROGRAMME, MYTH, REALITY* 164 (1990).

94. TOM NARIN, *THE BREAK-UP OF BRITAIN: CRISIS AND NEO-NATIONALISM* 331-50 (1977).

95. HORACE B. DAVID, *TOWARDS A MARXIST THEORY OF NATIONALISM* 29 (1978).

96. See generally LEON POLIAKOV, *THE ARYAN MYTH: A HISTORY OF RACIST AND NATIONALIST IDEAS IN EUROPE* 1-8 (1975), and J. BARZUN, *RACE: A STUDY IN MODERN SUPERSTITION* 28-50 (1938).

97. H. KOHN, *THE IDEA OF NATIONALISM: A STUDY OF ITS ORIGINS AND BACKGROUND* 13 (1945).

98. LORD ACTON, *supra* note 10, at 30.

99. OTTO BAUER, *The Nation*, in *MAPPING THE NATION* 52 (1924).

100. HOBBSBAWM, *supra* note 93, at 108; RICHARD HOFSTADTER, *SOCIAL DARWINISM IN AMERICAN THOUGHT* 172 (1955); STOCKING, *VICTORIAN ANTHROPOLOGY* *supra* note 8, at 32, 66, and 235.

[they] had not yet found a self to determine.”<sup>101</sup> The colonizers emphasized that multiple races of India resulted in multiple nations, each irrevocably distinct from the others.<sup>102</sup> Europe was held to contain “national types,” a result of genetic muddying of the population was such that the constituent sub-types could no longer be discerned; India, by contrast, presented:

a remarkable contrast to most other parts of the world, where anthropometry has to confess itself hindered, if not baffled, by the constant intermixture of types, obscuring the data ascertained by measurements . . . In India the process of fusion was long ago arrested . . . There is consequently no national type, and no nation in the ordinary sense of the word.<sup>103</sup>

Where the colonizer had used the circular discourse of evolutionary Social Darwinism - race, nation, History - to deny Indian nationhood, the nationalist project in its formative phase recuperated the three terms into systematic nationalist doctrines. Where the racialized notions of “India,” “Hindu,” and “Aryan,” were homogenizing and essentializing devices useful for colonial definition of what they ruled, for the nationalists, these became useful to claim a broad domain that their cultural knowledge qualified them to govern.<sup>104</sup> In particular the Aryan race theory, a colonial construction itself, was appropriated by two early claims to national identity in colonial India, one, the claim of succession to Aryan masculinity to contest colonial constructions of native femininity, and two, a claim that all Hindus belonged to a common race and were thus, a nation.

One strand of racialized Indian nationalism issued from emerging nationalist self-definitions that appropriated the Aryan race theory in order to contest the colonial racial stereotype of the non-martial Bengali. During the nineteenth century, as part of the “British response to the political challenge from the Bengali middle class”<sup>105</sup> and the Revolt of 1857, the colonial stereotype of the effeminate non-martial Bengali was produced. Responses by Bengali nationalists, pioneers of Indian nationalism, to the martial race theory varied. Some strove to overcome this “weakness” through the pursuit of physical culture.<sup>106</sup> Others sought to

101. A.P. THORNTON, *DOCTRINES OF IMPERIALISM* 158 (1965).

102. See, e.g., REGINALD CRADDOCK, *THE DILEMMA IN INDIA* 1-9 (1929).

103. H.H. Risley, *Ethnology and Caste*, in *THE IMPERIAL GAZETTEER OF INDIA* 288 (1909).

104. Sudipta Kaviraj, *The Imaginary Institution of India*, in *VII SUBALTERN STUDIES* 1 (Partha Chatterjee & Gyanendra Pandey eds., 1993).

105. Mrinalini Sinha, *Gender and Imperialism: Colonial Policy and the Ideology of Moral Imperialism in the Late Nineteenth-Century Bengal*, in *CHANGING MEN: NEW DIRECTIONS IN RESEARCH ON MEN AND MASCULINITY* 217 (Michael S. Kimmel ed., 1987).

106. See John Rosselli, *The Self-Image of Effeteness: Physical Education and Nationalism in Nineteenth-Century Bengal*, in *PAST AND PRESENT* 86 (1980).

reform cultural norms and inculcate a desire for liberty and collective solidarity.<sup>107</sup> Paradoxically, the project to refute colonial constructs involved partial adoptions of the colonial discourse of the Aryan race, and made Aryan racial identity an overarching theme of national renaissance and renewal.<sup>108</sup> The colonial notion of the effeminate Bengali was challenged by constructing alternative heroic figures; stories of Rajput valor were propagated as examples of physique and spirit of their Aryan ancestry, substantiating that nationalism has "typically sprung from masculinized memory, masculinized humiliation and masculinized hope."<sup>109</sup> Images of Aryan womanhood, with its heroic capacity to sacrifice, and of the Aryan mother, capable of mothering fearless sons, became widespread.<sup>110</sup> The Aryan heroines represented the response of an affronted Bengali masculinity. Invocations of Aryan glories were attempts to reclaim a glorious past - a past where the Bengali could claim virility and manhood, qualities he allegedly lacked.

The racialized discourse of nationhood was also appropriated by the Hindu religious variant of Indian nationalism in the early twentieth century. The pioneers of Hindu nationalism kept abreast of, and were clearly influenced by, European discourse of race-nation and the constructions of India's past, implied by the Aryan race theory.<sup>111</sup> Appropriating Orientalist research, these nationalist posited the conquering Aryans, embodying a superior civilization and culture, as the ancestors of the Hindus. They propagated the idea of "vedic Aryas" as a primordial elect people, whose language, Sanskrit, was the "[m]other of all languages,"<sup>112</sup> and who had spread out and colonized most of the world.<sup>113</sup> An influential Hindu nationalist text defined a Hindu as one "who inherits the blood of the great race whose first and discernible source could be traced from the Himalayan altitudes . . . and claims as his own . . . the Hindi civilization, as represented in a common history,

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107. See CHATTERJEE, *supra* note 19, 54-84.

108. See Indira Chowdhury-Sengupta, *The Effeminate and the Masculine: Nationalism and the Concept of Race in Colonial Bengal*, in *THE CONCEPT OF RACE IN SOUTH ASIA* 282 (Peter Robb ed., 1997).

109. CYNTHIA ENLOE, *BANANAS, BEACHES AND BASES: MAKING FEMINIST SENSE OF INTERNATIONAL POLITICS* 44 (1989).

110. See Tanika Sarkar, *Nationalist Iconography: Image of Women in Nineteenth Century Bengal*, *ECO. & POL. WEEKLY*, Nov. 21, 1987, at 2011-15, and Jashodhara Bagchi, *Representing Nationalism: Ideology of Motherhood in Colonial Bengal*, *ECO. & POL. WEEKLY*, Oct. 20-27, 1990, at 66.

111. J.T.F. JORDENS, *DAYANANDA SARASVATI - HIS LIFE AND IDEAS* 170 (1978).

112. SWAMI DAYANANDA, *THE LIGHT OF TRUTH* 249 (Ganga Prashad Upadhyaya trans. 1981).

113. HAR BILAS SARDA, *HINDU SUPERIORITY - AN ATTEMPT TO DETERMINE THE POSITION OF THE HINDU RACE IN THE SCALE OF NATIONS* 109-63 (1975). See also BAL GANGADHAR TILAK, *THE ARTIC HOME IN THE VEDAS* (1903). Both books are replete with references to European philologists.

common heroes, a common literature, common art, a common law and a common jurisprudence. . . ."<sup>114</sup> It was asserted that Hindus "are not only a Nation but also a race-*jati* . . . . All Hindus claim to have in their veins the blood of the mighty race incorporated with and descended from the vedic fathers. . . ."<sup>115</sup> Here was an attempt to demonstrate that an original unity underlies the diversity of Hindus, that beyond all visible differences there exists an invisible bond - blood and race. History, race, and nation were conjoined to legitimate nationhood: "Living in this country since pre-historic times . . . the Hindu Race [is] united together by common traditions, by memories of Common glory and disaster, by similar historical, political, social, religious, and other experiences."<sup>116</sup> *Hindutva* (Hinduness) was posited as the conceptual expression of

common affinities, cultural, religious, historical, linguistic and racial, which through the process of countless centuries of association and assimilation moulded us into a homogeneous and organic Nation and . . . induced a will to lead a corporate and common National life. The Hindus . . . are an organic National Being.<sup>117</sup>

While this Hindu-race-nation thesis was overshadowed by the modernist territorial nationalism championed by Gandhi and Nehru, it never completely withered away. Indeed there has been a resurrection of the position by the present-day Hindu right, an ascendant political force, that aims to redefine Indian nationhood as the exclusive province of a so-called Hindu race, bonded by ties of blood, soil and history.<sup>118</sup> This political project that the past, present and future of the Indian nation be constituted around the notion of *Hindutva* (Hinduness), becomes possible only within the modern forms of historiography, a historiography necessarily constructed around the identity of a people-nation-state. The idea that Indian nationalism is synonymous with Hindu race-nation is not the vestige of some pre-modern religious conception. Its genealogy implicates colonial racialized constructions of India, and native imaginings in the late nineteenth and early twentieth century of India as a

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114. V.D. SAVARKAR, *HINDUTVA: WHO IS A HINDU?* 100 (2d ed. 1969). In his autobiography Savarkar mentions the influence of Charles Darwin, Herbert Spencer, John Tyndall, Ernst Heinrich Haeckel and Thomas Henry Huxley. See V.D. SAVARKAR, *MY TRANSPORTATION FOR LIFE* 269-70 (1984).

115. *Id.* at 84-85.

116. M.S. GOLWALKAR, *WE, OR OUR NATIONHOOD* 48 (1947).

117. VINAYAK SAVARKAR, *HINDU-RASHTA DARSHAN* 79 (1984).

118. Susan Bayley, *History and the Fundamentalists: India After the Ayodhya Crisis*, 46 *BULLETIN OF THE AMERICAN ACADEMY OF ARTS AND SCIENCES* 7 (1993). On the revival of Hindu nationalism, see BRUCE GRAHAM, *HINDU NATIONALISM AND INDIAN POLITICS: THE ORIGINS AND DEVELOPMENT OF THE BHARATIYA JAN SANGH* (1990); TAPAN BASU, ed., *KHAKI SHORTS AND SAFFRON FLAGS: A CRITIQUE OF THE HINDU RIGHT* (1993); and VASUDHA DALMIA & HEINRICH VON STIETENCRON, eds., *REPRESENTING HINDUISM: THE CONSTRUCTION OF RELIGIOUS TRADITIONS AND NATIONAL IDENTITY* (1995).

nation; imaginings that remained imprisoned in colonial constructs, even as they sought to overturn them.

#### IV. CONCLUSION

In the modern world, the universalist promise of freedom and equality has often floundered when confronted with difference—gender, class, sexuality, and race being the salient sites of this confrontation. By uncovering how difference is constituted to reconcile the professed promise with practiced denial of freedom and equality, we may be better positioned to participate in struggles to secure these cherished goals. To the extent that colonialism furnished particular sites for modern constructions of difference, those struggling to achieve freedom and equality will ignore lessons of colonialism at their own peril.

The project of broadening the scope of Critical Race Theory must keep Europe's colonial encounter as a high priority on its research agenda. In this context, specific questions that need deeper analysis abound. What grammar of racial difference reconciled colonial domination with Enlightenment agendas of freedom, equality, and reason? How did the colonies, as particular sites of knowledge production, facilitate modern constructions of race? What particular disciplines and technologies were fashioned to enable such constructions? How was race inserted into discursive and institutional structures of colonial rule? How were colonizers' discourses and practices of race adopted and internalized by the colonized? How is the terrain of post-coloniality marked by traces of the racialized colonial encounter?